

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

MAY 18, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Glaxo Group Limited

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Serial No. 75/086,222

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Thomas J. Moore of Bacon & Thomas for Glaxo Group Limited.

Alec Powers, Trademark Examining Attorney, Law Office 105  
(Thomas Howell, Managing Attorney).

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Before Hanak, Hairston and Chapman, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

Glaxo Group Limited seeks registration of the mark  
shown below for "pharmaceutical preparations and  
substances, namely, anesthetics and analgesics."

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The application was filed on April 10, 1996, based on a bona fide intention to use the mark in commerce. In an amendment to allege use filed January 21, 1997, applicant submitted several specimens which consist of identical boxes for the goods. Panels from one of the boxes are reproduced below:

Applicant has described the mark as follows: "The mark comprises the design of a stylized letter V."<sup>1</sup> We should

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<sup>1</sup> We note that applicant initially provided the following description of the mark: "The mark consists of a shaded arrowhead design, pointing down."

note that, on the specimens, the letters in the word "ULTIVA" are purple and the design element gradually changes color from pink or light purple at its widest point to blue and then to purple at its narrowest point.

The Trademark Examining Attorney has made final a requirement for substitute specimens, arguing that the specimens of record do not show use of the mark as it appears in the drawing.

Applicant has appealed from the requirement.<sup>2</sup> Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the requirement for substitute specimens.

It is essentially the Examining Attorney's position that the mark shown in the drawing is a fully shaded arrowhead design pointing downward; that this design forms part of the letter "V" in the term "ULTIVA"; and that, therefore, the design shown in the drawing does not create a separate and distinct commercial impression because it appears on the specimens as part of the term "ULTIVA."

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<sup>2</sup> We note applicant's contention that the final requirement to provide substitute specimens was premature. However, inasmuch as the requirement for substitute specimens was first made in an Office action dated March 29, 1997, applicant's contention is not well taken. See TMBP Section 1201.02.

Applicant, however, argues that purchasers, upon seeing the boxes for its goods, would be drawn to the "gradually changing color" design which is much larger and clearly stands out from the term "ULTIVA."

Trademark Rule 2.51 (a)(1) provides, in pertinent part, that "the drawing of the trademark shall be a substantially exact representation of the mark as used on or in connection with the goods[.]" It is well settled that an applicant may apply to register any element of a composite mark if that element, as shown in the record presents a separate and distinct commercial impression which indicates the source of applicant's goods or services and distinguishes applicant's goods or services from those of others. See, e.g., *In re Chemical Dynamics Inc.*, 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988); and *Institut National des Appellations D'Origine v. Vitners International Co., Inc.*, 954 F.2d 1574, 22 USPQ2d 1190, 1197 (Fed. Cir. 1992), citing *In re Servel, Inc.*, 181 F.2d 192, 85 USPQ 257 (CCPA 1950); *In re Berg Electronics, Inc.*, 163 USPQ 487 (TTAB 1969); *In re Tekelec-Airtronic*, 188 USPQ 694 (TTAB 1975); *In re Lear Siegler, Inc.*, 190 USPQ 317 (TTAB 1976); and *In re San Diego National League Baseball Club, Inc.*, 224 USPQ 1067 (TTAB 1983). See also, Trademark Manual of Examining Procedure, Section 807.14(b).

In this case, we find that the design shown in the drawing, whether characterized as an arrowhead or a stylized letter "V", cannot be regarded as a separable element creating a separate and distinct commercial impression from the actual letter "V" in the term ULTIVA. The design shown in the drawing encompasses a highly stylized letter "V" and applicant has acknowledged as much in its description of the mark, i.e., "a stylized letter V." With respect to applicant's contention that purchasers would be drawn to the "gradually changing color" of the design, we note that applicant has not claimed color as a feature of the mark. As shown in the drawing, and as set forth in the description of the mark, applicant seeks to register a design which forms a highly stylized letter "V" which is an integral part of the actual letter "V" in the term ULTIVA as presented on the specimens. Therefore, the specimens of record do not support registration of the design in the drawing.

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**Decision:** The requirement for substitute specimens is affirmed.

E. W. Hanak

P. T. Hairston

B. A. Chapman  
Administrative Trademark  
Judges, Trademark Trial and  
Appeal Board